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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,665	03/04/2005	Raimo Liukko	09602.0003-00000	3162

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EXAMINER
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PEARSE, ADEPEJU OMOLOLA

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 02/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/526,665	<b>Applicant(s)</b> LIUKKO, RAIMO	
	<b>Examiner</b> Adepeju Pearse	<b>Art Unit</b> 1761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.  
     4a) Of the above claim(s) 9-23 and 27-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 24-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

- I. Claims 1-8 and 24-26, drawn to a gelly edible product
- II. Claims 9-23 and 27-40, drawn to a process for preparing a gelly edible product,

The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the product as claimed can be made by another and materially different process and does require the specific formulation of cooling by pressure drop.

During a telephone conversation with Mr. Scott on 2/15/2006 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-8 and 24-26. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-23 and 27-40 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1-8 and 24-26 rejected under 35 U.S.C. 102(b) as being anticipated by O'Rourke (U.S. Pat. No. 4,215,152). With regard to claims 1 and 2, O'Rourke discloses an instant pudding product comprising of starch from 20 to 50% and water content of 50 to 80% (abstract, col 2 lines 66-68). These ranges are within applicant's instantly claimed range. The Office does not have the capability to measure the percentage of the broken cells of the vegetable material or measure the amylase particles. These are process limitation and since the product claim limitations are met, this would be an inherent property since the instantly claimed product and the reference product are utilizing the same ingredients to form a gel product. See *In Re Thorpe*

"Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) "

1. With regard to claims 3-5, O'Rourke discloses corn, potato, rice, etc as suitable sources of starch (col 2 lines 1-3). It is well known in the art that potato is a tuberous root and it is inherent that it comprises its entire cell mass.

2. With regard to claim 6, O'Rourke discloses water content of 50 to 80% (col 2 line 67). This range encompasses applicant's recited amount.

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3. With regard to claims 7 and 8, O'Rourke discloses an instant pudding comprising proteins, emulsifiers, etc. the protein adds viscosity and increases the texture and mouth feel while the emulsifier acts to impart a creaminess, smoothness and gloss to the pudding (col 1 lines 53-58). It is inherent that the protein and emulsifier are structure-modifying agents as recited.
4. With regard to claims 24, O'Rourke discloses that the starch utilized is ground and screened so that they pass through a 200 mesh U.S Standard screen and optimally to pass through a 230 mesh U.S. standard screen in order to be suitable for a product such as instant pudding (col 3 lines 6-13). It is inherent that the particle size of the starch is within applicant's instantly claimed size in order to provide a smooth and non-grainy texture to the product.
5. With regard to claims 25-26, O'Rourke discloses corn, potato, rice, etc as suitable sources of starch (col 2 lines 1-3). It is inherent that the entire cell mass of peeled potatoes is utilized in order to retain all the nutrients in the potato.

### *Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Prior art discloses applicable subject matter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Art Unit 1761



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